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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,457

01/23/2004

Andrew Halliday

67634

6755

48940

7590

05/19/2006

FITCH EVEN TABIN & FLANNERY
120 S. LASALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

EXAMINER

ALEXANDER, REGINALD

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/763,457

Applicant(s)

HALLIDAY ET AL.

Examiner

Reginald L. Alexander

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1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8-25 and 30-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-25, 31, 33-37, 40 and 41 is/are rejected.
- 7) ☒ Claim(s) 32, 38 and 39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 40 and 41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to provide support for the "sealing surface" and "piercing location" recited in claim 40.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5 and 8-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Halliday et al. '333.

There is disclosed in Halliday a cartridge 1 containing a beverage ingredient and being formed of an air and water impermeable material, the cartridge defining a storage

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chamber 9 containing the ingredients 8, a manifold chamber 6 extending substantially continuously around a periphery of the storage chamber, the cartridge comprising an opening through which ingredients can be filled into the storage chamber, the opening being closed by a lid 3 having a first portion (outer periphery) overlying the manifold chamber and a second portion (inner area) overlying the storage chamber, wherein the first portion and second portion are pierceable to accommodate an inflow and outflow of liquid, a discharge chamber 37, a discharge spout 5, a partition dividing the manifold and storage chambers the partition having apertures 7. In regards to the claimed aperture sizes and number, Halliday appears to meet those limitations.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8-25, 31 and 33-37 are rejected under 35 U.S.C. 102(b) as being anticipated by EPO 638486.

There is disclosed in the European reference a cartridge 1, the cartridge defining a storage chamber 9 containing a beverage ingredient 8, a manifold chamber 6 extending substantially continuously around a periphery of the storage chamber, an inlet portion 4 communicating with the manifold chamber, an opening through which ingredients can be filled in to the storage chamber, the opening being closed by a lid 3 having a first portion (outer periphery) overlying the manifold chamber and a second portion (inner area) overlying the storage chamber, wherein the first and second portions are pierceable to accommodate an inflow and outflow of liquid, a discharge chamber 37 which is overlain by a third portion of the lid, a discharge spout 5, a partition

dividing the manifold and storage chambers the partition having apertures 7, and a filter material 10.

In regards to the piercing of the lid and its location, such is functional without a positive recitation of a means to pierce.

Allowable Subject Matter

Claims 32, 38 and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 30 is allowed.

Response to Arguments

Applicant's arguments filed 10 April 2006 have been fully considered but they are not persuasive. Applicant argues that the prior art fails to disclose a manifold chamber which extends substantially continuously around the periphery of the storage chamber. While EP638486 and Halliday both disclose a manifold chamber which extends about the storage chamber, the extension is limited to three sides thereof. But, applicant has not made clear what is defined by "substantially continuously". Such a phrase appears to be met structurally by the arrangement shown in the prior art.

Applicant argues that the EPO reference fails to disclose a centrally located discharge chamber. Again applicant has failed to further define a structural arrangement with use of a phrase. The discharge chamber of the EPO reference is centered between the two side walls of the cartridge. Such an arrangement meets the limitations of the claim.

Applicant argues that the neither the Halliday or EPO references disclose a lid being joined to an inner member at or near a center of the cartridge. Both Halliday and the EPO reference discloses a lid 9 (foil sheet) which contacts an outer periphery of the cartridge and the wall forming the manifold chamber. Defining "near a center" to mean just spaced from the periphery, the wall forming the manifold chamber is structure meeting claimed limitation.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

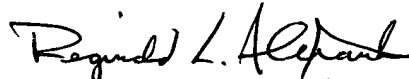
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

rla
12 May 2006


Reginald L. Alexander
Primary Examiner
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